

NOT FOR PUBLICATION

JAN 07 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 07-10006

Plaintiff - Appellee,

D.C. No. CV-06-00797-RCC

v.

MEMORANDUM*

CAYETANO ANTONIO-CRUZ,

Defendant - Appellant.

Appeal from the United States District Court for the District of Arizona Raner C. Collins, District Judge, Presiding

Argued and Submitted October 19, 2007 San Francisco, California

Before: KLEINFELD and RAWLINSON, Circuit Judges, and RESTANI,** Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

Cayetano Antonio-Cruz appeals a district judge's application of a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) for his prior involuntary manslaughter conviction.

We have carefully examined the South Carolina cases cited by counsel in their 28(j) letters. Considering the requirement in <u>Gonzales v. Duenas-Alvarez</u>¹ that the crime be a realistic instead of theoretical possibility, South Carolina involuntary manslaughter² fits within the generic definition of manslaughter.³ The distinction between the two statutes is one of word choice, not a "meaningful distinction" between the application of the two provisions.⁴

AFFIRMED.

¹ Gonzales v. Duenas-Alvarez, 127 S. Ct. 815, 822 (2007).

² S.C. Code § 16-3-60; <u>State v. Crosby</u>, 584 S.E.2d 110, 112 (S.C. 2003).

³ <u>See Taylor v. United States</u>, 495 U.S. 575, 598 (1990); <u>United States v.</u> <u>Gonzalez-Perez</u>, 472 F.3d 1158, 1161 (9th Cir. 2007).

⁴ <u>See United States v. Velazquez-Reyes</u>, 427 F.3d 1227, 1230 (9th Cir. 2005).